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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 March 1996]

1. In June of 1996, representatives of Governments will gather in Istanbul, at the United Nations Conference on Human Settlement (referred to as Habitat II). They will approve a document that will state principles, commitments and a global plan for action in the area of housing, shelter and settlements. The Conference could provide an opportunity to reaffirm the rights already established by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and other human rights documents and to develop further their interpretation and Governments' commitments to their implementation. Unfortunately, the current draft of the final document, the Habitat Agenda, fails to seize this opportunity.

2. Human Rights Watch is troubled by the draft Habitat Agenda's failure to reflect the integral relationship between internationally recognized human rights and the issues of shelter and settlements. The major human rights treaties that recognize the right to adequate housing are not mentioned in the draft, nor does the draft draw connections between violations of civil and political rights and the consequent threats to human shelter and life.

3. The most thoughtful formulations of housing policy will not suffice to realize the right to housing if Governments seek to dilute their obligations under existing laws as they pertain to forced evictions and population transfers, the treatment of refugees, women and children, guarantees of non-discrimination, and universal civil, political, economic, social and cultural rights. These issues are elaborated below.

4. Human Rights Watch calls on the United Nations Commission on Human Rights to urge all participants in the Habitat process to press for the inclusion of these basic rights in the Agenda, so that the Habitat Plan of Action will truly represent a step forward, building on the bedrock of existing international human rights standards.

Explicit recognition of the universal right to adequate housing

5. The explicit recognition in the draft Agenda that adequate housing is a universal human right is still being disputed by Governments, and the reference to this universal human right is bracketed. Such recognition would not be, as some Governments have argued, an innovation; the right to adequate housing has been established by international human rights law in numerous treaties, as follows:

(a) The International Covenant on Economic, Social and Cultural Rights, ratified by 133 nations, provides in article 11 (1) that all States parties recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ..." (emphasis added);

(b) The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by 146 nations, provides in article 5 (e) (iii) that States parties "undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) in particular ... (iii) the right to housing" (emphasis added);

(c) The Convention on the Elimination of All Forms of Discrimination against Women, ratified by 151 nations, provides in article 14 (2) that States parties shall "take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications" (emphasis added);

(d) The Convention on the Rights of the Child, ratified by 187 nations, provides in article 27 (3) that States parties "in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing" (emphasis added).

6. Moreover, international humanitarian law explicitly prohibits the permanent forcible displacement of people in circumstances of armed conflict, allowing only for temporary displacement in the interest of the safety of civilians or where imperative military reasons so demand.

7. The provision and protection of adequate shelter is not merely a "goal" but an obligation of States, and the Habitat Agenda should reflect a commitment to realizing this fundamental right.

Forced evictions

8. United Nations bodies have explicitly recognized forced eviction under some circumstances as a violation of the right to adequate housing. 1/ The Committee on Economic, Social and Cultural Rights "considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". 2/ Forced evictions are frequently entwined with deprivations of civil and political rights, such as the right to free speech, assembly and association, the prohibition on arbitrary detention, and labour rights. Examples include:

(a) More than a million Chinese living along the Yangtze River are in the process of being forcibly relocated to largely infertile and overpopulated upland areas in connection with the construction of the massive Three Gorges Dam project. Regulations issued by the Sichuan provincial government make clear that evacuation is compulsory. Opposition is punishable under China's public security laws. Public information and comment on the dam project have been severely restricted. Only 30 per cent of determined compensation levels are to be paid directly to those resettled, with the rest to be given to local authorities in resettlement zones for agricultural and industrial development, from which those resettled would supposedly benefit. Those to be moved have not been consulted about this method of compensation, and there have already been arrests on counter-revolution charges of those who have protested against resettlements; 3/

(b) Beginning in 1988, a series of protests was mounted by rural activists, villagers slated for relocation, and social and political action groups in western India against the Sardar Sarovar Project, involving a series of dams to be constructed along the Narmada River. The villagers scheduled for relocation claimed they had no access to full information about the project, nor were they offered adequate compensation. Their protests and those of activists mobilized on their behalf, usually in the form of mass demonstrations, were met by excessive use of force on the part of police, detention and abuse in custody after arrest, and various forms of threats and harassment. 4/

9. Unfortunately, the Agenda draft paragraph that refers to forced evictions is still under dispute, and the text fails to address properly the issue of the necessary legal safeguards for challenging them. Avoiding the widely used term "forced eviction" by using, for example the term "illegal evictions" obscures the duty of States to provide adequate legal remedies whenever abusive forced evictions occur.

Displacement of civilians in armed conflicts

10. The displacement of civilians during armed conflicts is another cause of the massive deprivation of shelter. In this decade the world has seen unprecedented flows of refugees and displaced persons as a result of war, and particularly as a result of the violation of the prohibition on displacement of civilians except where their own security or where military necessity so requires.

11. The forced displacement of non-Serbs has continued to be carried out in Bosnia for nearly four years, and even as recently as November 1995, during the months following the collapse of the two United Nations-designated "safe areas" of Srebrenica and Zepa and while active peace negotiations were under way. 5/

12. Governments' counterinsurgency strategies may include the destruction and dislocation of civilian settlements to punish imputed support for insurgents and to deprive insurgents of such imputed support.

13. In Turkey, since the Government's war with the Kurdistan Workers Party (PKK) began in 1984, almost 2 million civilian ethnic Kurds have left their homes, many driven out by government counterinsurgency campaigns, and over 2,200 of their villages in the south-east have been partially or completely depopulated by security forces. 6/

14. The draft Agenda fails to address the impact of armed conflicts on human settlement and the related obligations for the warring parties under international humanitarian law.

The needs of vulnerable groups

15. The Agenda's definition of vulnerable groups is inconsistent and vague. Specific issues that pertain to categories of persons who are frequently placed in a position of inequality or vulnerability have not been fully addressed.

16. Refugees and the internally displaced. Although the draft Agenda recognizes the increasing numbers of those displaced from their homes by war or persecution, it does not discuss the prevention of the gross human rights abuses that lie at the root of the deprivation of adequate shelter for millions around the world.

17. Homeless persons. The prohibition on discrimination on account of property requires that no one be punished simply because he or she is poor or homeless. Human Rights Watch is concerned at the tendency of Governments to enact new laws or discriminatorily to enforce existing laws in a manner that

makes it inevitable that persons who are destitute or homeless will be penalized merely because of their circumstances. In some United States municipalities, for example, Governments have approved a framework of ordinances that serve to allow the arrest of homeless or poor people merely for lingering in public places.

18. Women. Despite the recognition in various provisions of the draft Agenda of the need to ensure that women have equal access to housing as do men, the draft falls short in several key areas: addressing the role of statutory discrimination regarding property rights, recognizing the special needs and personal security risks of displaced women, and dealing with women's heightened vulnerability to becoming homeless through acts of domestic and other violence.

19. Children. The draft Agenda only sporadically mentions the needs of children in its discussion of shelter for all, despite the explicit recognition in the Convention on the Rights of the Child of the right of every child "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development", and to the responsibility of States to provide assistance in housing "in case of need".

Notes

1/ See, e.g. United Nations Commission on Human Rights resolution 1993/77; the report of the United Nations Secretary-General, "Analytical report on forced evictions" (E/CN.4/1994/20); and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1995/29.

2/ General Comment No. 4 on the right to adequate housing (art. 11 (1) of the International Covenant on Economic, Social and Cultural Rights, para. 18, in "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies" (HRI/GEN/1/Rev.1)).

3/ See Human Rights Watch/Asia, "The Three Gorges Dam in China: forced resettlement, suppression of dissent and labour rights concerns", A Human Rights Watch Short Report, vol. 7, No. 2 (New York: Human Rights Watch, February 1995).

4/ See Asia Watch, "Before the deluge: human rights abuses at India's Narmada Dam", A Human Rights Watch Short Report, vol. 4, No. 15 (New York: Human Rights Watch, June 1992).

5/ See Human Rights Watch/Helsinki, "Northwestern Bosnia: human rights abuses during a cease-fire and peace negotiations", A Human Rights Watch Short Report, vol. 8, No. 1 (New York: Human Rights Watch, February 1996).

6/ See Human Rights Watch Arms Project, Weapons Transfers and Violations of the Laws of War in Turkey (New York: Human Rights Watch, November 1995); Human Rights Watch/Helsinki, "Forced displacement of ethnic Kurds from southeastern Turkey", A Human Rights Watch Short Report, vol. 6, No. 12 (New York: Human Rights Watch, October 1994).